

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. 200701902-2

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Bindu Rama Rao

Confirmation No.: 6320

Application No.: 10/706,219

Examiner: Kendall, Chuck O.

Filing Date: November 12, 2003

Group Art Unit: 2192

Title: Firmware Update In Electronic Devices Employing SIM Card For Saving Metadata Information

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on April 1, 2009.

☒ The fee for filing this Appeal Brief is \$510.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month
\$120

☐ 2nd Month
\$460

☐ 3rd Month
\$1050

☐ 4th Month
\$1640

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 510 . At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Respectfully submitted,

Bindu Rama Rao

By /Kevin E. Borg/

Kevin E. Borg

Attorney/Agent for Applicant(s)

Reg No. : 51,486

Date : April 1, 2009

Telephone : 312-775-8000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:)	
)	
Bindu Rama Rao)	
)	
Serial No. 10/706,219)	
)	
Filed: November 12, 2003)	
)	
For: Firmware Update In Electronic)	Electronically Filed on
Devices Employing SIM Card For)	
Saving Metadata Information)	
)	April 1, 2009.
Examiner: Kendall, Chuck O.)	
)	
Group Art Unit: 2192)	
)	
Confirmation No. 6320)	
)	

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests that the Board of Patent Appeals and Interferences reverse the final rejection of claims 1-29 of the present application. This Appeal Brief is timely because it is being filed within two months of the April 1, 2009 date of filing the Notice of Appeal.

Application Serial No. 10/706,219
Appeal Brief
April 1, 2009

REAL PARTY IN INTEREST
(37 C.F.R. § 41.37(c)(1)(ii))

The real party in interest is Hewlett-Packard Development Company, L.P., having a place of business in Houston, Texas.

RELATED APPEALS AND INTERFERENCES
(37 C.F.R. § 41.37(c)(1)(iii))

A previous appeal brief was filed for the present application, Serial No. 10/706,219, on September 18, 2007. The Examiner re-opened prosecution after the brief was filed.

STATUS OF THE CLAIMS
(37 C.F.R. § 41.37(c)(1)(iii))

The present application includes claims 1-29, all of which stand rejected.¹ Applicant identifies claims 1-29 as the claims that are being appealed. The text of the pending claims is provided in the Claims Appendix.

STATUS OF AMENDMENTS
(37 C.F.R. § 41.37(c)(1)(iv))

Subsequent to the final rejection of claims 1-29 mailed January 06, 2009, the Applicant did not amend any of the claims.

¹ See January 6, 2009 Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER
(37 C.F.R. § 41.37(c)(1)(v))

Independent claim 1:

Independent claim 1 recites an updatable electronic device.² The updatable electronic device comprises a memory comprising at least one of firmware and software.³ Further, the updatable electronic device comprises at least one firmware component,⁴ functioning to update at least a portion of at least one of firmware and software using update information stored in the memory.⁵ The updatable electronic device also comprises an interface for communicatively coupling to a removable electronic memory device,⁶ wherein the removable electronic memory device comprises metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software.⁷

² See present application, *e.g.*, at page 7, lines 7-12; and Fig. 1, reference numeral 109.

³ See *id.*, *e.g.*, at page 7, lines 7-13; and Fig. 1, reference numeral 133.

⁴ See *id.*, *e.g.*, at page 3, lines 5-11; page 7, lines 12-16; and Fig. 1, reference numerals 125 and 131.

⁵ See *id.*, *e.g.*, at page 7, lines 13-22 and 17-29; page 9, lines 9-14; page 10, lines 22-26; page 10, line 30 – page 11, line 17; page 11, lines 27-30; and Fig. 2, reference numeral 219.

⁶ See *id.*, *e.g.*, at page 3, lines 2-5; page 8, lines 8-20; Fig. 1, reference numeral 111.

⁷ See *id.*, *e.g.*, at page 8, lines 17-29; page 9, lines 9-16; and Fig. 1, reference numeral

Independent claim 11:

Independent claim 11 recites a method of updating an updatable electronic device comprising a memory containing at least one of firmware and software, and a user removable electronic memory device.⁸ The method comprises retrieving metadata information from the user removable electronic memory device;⁹ determining whether update information for updating the at least one of firmware and software is available in the memory, using the metadata information from the user removable electronic memory device;¹⁰ performing an update of at least a portion of the at least one of firmware and software using at least a portion of the metadata information from the user removable electronic memory device, if update information for updating the at least one of firmware and software is available in the memory;¹¹ and refraining from performing an update of at least a portion of the at least one of firmware and software, if update information for updating the at least one of firmware and software is not available in the memory.¹²

123.

⁸ See *id.*, e.g., at page 7, lines 7-11; page 8, lines 8-11; and Fig. 1, reference numerals 109, 123, and 133.

⁹ See *id.*, e.g., at page 10, lines 18-26; and Fig. 2, reference numeral 217.

¹⁰ See *id.*, e.g., at page 3, line 29 – page 4, line 1; page 7, lines 2-6; page 10, lines 20-26; page 10, line 30 – page 11, line 17; and Fig. 2, reference numerals 213 and 215.

¹¹ See *id.*, e.g., at page 10, lines 20-26; page 10, line 30 – page 11, line 17; and Fig. 2, reference numeral 219.

¹² See *id.*, e.g., at page 10, lines 27-29; and Fig. 2, reference numeral 215.

Dependent claim 7:

Claim 7 recites the device of claim 1 wherein the metadata information associated with the stored update information for updating of the at least one firmware and software comprises an indication of the availability in the memory of update information for the at least one of a firmware and software.¹³

Dependent claim 19 recites the following:

Dependent claim 19 recites the method of claim 18 wherein the receiving is performed using a wireless network;¹⁴ and the metadata information from the user removable electronic memory device comprises the location of at least one of the update package and the server.¹⁵

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. § 41.37(c)(1)(vi))**

Claims 1-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Johansson *et al.*, United States Patent No. 5,418,837 (hereinafter "Johansson") in view of Thurston, United States Patent Application Publication No. 20030217358 (hereinafter "Thurston"). (See Final Office Action at p. 2.)

ARGUMENT

¹³ See *id.*, e.g., at page 4, lines 13-17; page 10, lines 18-26.

¹⁴ See *id.*, e.g., at page 3, lines 11-14.

¹⁵ See *id.*, e.g., at page 4, lines 17-21; and page 7, lines 2-6.

(37 C.F.R. § 41.37(c)(1)(vii))

The Examiner has maintained the rejections of claims 1-29.

Claims 1-10 and 24-26 should be in condition for allowance at least because the cited references, either alone or in combination, do not teach, suggest, or otherwise render obvious an updatable electronic device, the updatable electronic device comprising, *inter alia*, "at least one firmware component, functioning to update at least a portion of at least one of firmware and software using update information stored in the memory," and "wherein the removable electronic memory device comprises metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software."

Claims 11-23 and 27-29 should be in condition for allowance at least because the cited references, either alone or in combination, do not teach, suggest, or otherwise render obvious a method of updating an updatable electronic device comprising a memory containing at least one of firmware and software, and a user removable electronic memory device, the method comprising, *inter alia*, "determining whether update information for updating the at least one of firmware and software is available in the memory, using the metadata information from the user removable electronic memory device," "performing an update of at least a portion of the at least one of firmware and software using at least a portion of the metadata information from the user removable electronic memory device, if update information for updating the at least one of firmware and software is available in the memory," and "refraining from performing an

update of at least a portion of the at least one of firmware and software, if update information for updating the at least one of firmware and software is not available in the memory."

I. **The Proposed Combination Of Johansson And Thurston Does Not Render Claims 1-29 Unpatentable**

The burden is on the examiner to present a *prima facie* case of obviousness.

The legal concept of *prima facie* obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process.

* * *

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. **If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.**

See M.P.E.P. at § 2142 (emphasis added).

This burden cannot be met by "mere conclusory statements." (MPEP § 2142) Instead, there must be articulated reasoning with some rational underpinning to support the obviousness conclusion. (*Id.*) "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." (*Id.*) For reasons discussed in previous submissions (see, for example, Response filed October 15, 2008) as well as those set out in more detail below, Applicant respectfully submits that such a *prima facie* case has not been presented by

the Final Office Action, and further respectfully submits that the pending claims are allowable over the cited art.

A. The Proposed Combination Does Not Render Claims 1-10 and 24-26 Unpatentable

Applicant begins with independent claim 1 and the claims that depend from claim 1. Claim 1 recites an updatable electronic device comprising a memory comprising at least one of firmware and software; at least one firmware component, functioning to update at least a portion of at least one of firmware and software using update information stored in the memory; an interface for communicatively coupling to a removable electronic memory device; and wherein the removable electronic memory device comprises metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software.

Applicant respectfully submits that the proposed combination of Johansson and Thurston fails to teach, suggest, or otherwise render obvious, for example, an updatable electronic device, the updatable electronic device comprising, *inter alia*, "at least one firmware component, functioning to update at least a portion of at least one of firmware and software using update information stored in the memory," and "wherein the removable electronic memory device comprises metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software."

Applicant notes at the outset that "the stored update information" is "update information stored in the memory," "the memory" comprises "at least one of firmware

and software,” and the updatable electronic device comprises the memory as expressly recited by claim 1. Put another way, the “update information” is stored in the same memory (which is part of the updatable electronic device) as at least one of firmware and software. That “memory” is recited distinctly from the “removable electronic memory device,” as the updatable electronic device comprising the memory also comprises “an interface for communicatively coupling to a removable electronic memory device.” Thus, the claimed “metadata information” is stored on “the removable electronic memory device,” and the “update information” is stored (along with at least one of firmware and software) on “the memory” of the electronic device (which is distinct from the removable electronic memory device). Applicant respectfully submits that the cited combination does not teach, suggest, or otherwise render obvious, such update information stored in the memory as described by claim 1, let alone a removable electronic memory device comprising metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software.

The Final Office Action acknowledges that “Johansson doesn’t expressly disclose at least one firmware component, functioning to update at least a portion of at least one of firmware and software and wherein using update information stored in the memory and wherein the removable electronic memory device comprises metadata information associated with the stored update information.” (See Final Office Action at p. 3.)

However, the Final Office Action asserts that this admitted deficiency in the teachings of Johansson is remedied by Thurston:

However, Thurston in an analogous art and similar configuration discloses, "...firmware update utility 302 after receiving the firmware update package 108a extracts the metadata included in the header 400 and list of properties package 402..." [0051].

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Johansson and Thurston, because it would enable updating the associated information as suggested by Thurston Above.

(*Id.*) As an initial matter, Applicant notes that the asserted teaching of Thurston, as presented by the Office Action, only refers to a firmware update utility that receives a firmware update package and then extracts metadata included in a header and list of properties package. Thus, even taken on its own terms, the Office Action does not address "using information stored in the memory" at all, let alone "at least one firmware component, functioning to update at least a portion of at least one of firmware and software using update information stored in the memory" as claimed. The Office Action provides no explanation or rationale for how the asserted firmware update utility extracting metadata teaches or suggests in any way using "information stored in the memory" as claimed. Applicant respectfully submits that the Office Action fails to present a *prima facie* case of obviousness for this reason alone.

In any event, the cited portion of Thurston does not remedy the shortcomings in the teachings of Johansson, or serve to render the presently claimed subject matter obvious. That portion, namely [0051], reads as follows:

FIG. 6 illustrates overview of logic implemented in the device independent firmware update utility 302 and the device driver plug-in module 306 for updating firmware, in accordance with certain described implementations of the invention. The process starts at block 600, where the device independent firmware update utility 302 after receiving the firmware update package 108a extracts the metadata included in the header 400 and list of properties package 402. Control proceeds to block 602, where the device independent firmware update utility 302 verifies the system level constraints via the device dependent plug-in module 306. The system level constraints may include various constraints that are related to the host 100 and the software and hardware coupled to the host 100. For example, a system level constraint may check whether there is adequate storage and memory available on the host 100 for running the various components of the firmware update application 200. Control proceeds to block 604, where the device independent firmware update utility 302 requests the device dependent plug-in module 306 to discover hardware devices 310, 311 based on the satisfaction of static constraints 508 and dynamic constraints present in the list of properties package 402.

Applicant respectfully submits the above cited portion of Thurston does not remedy the acknowledged shortcomings of Johansson. As an initial matter, an examination of the cited portion of Thurston confirms that the cited portion of Thurston is silent with respect to “at least one firmware component, functioning to update at least a portion of at least one of firmware and software using update information stored in the memory.” (As discussed above, the Office Action’s explanation of Thurston did not address this aspect of the presently claimed subject matter.) Applicant respectfully submits the extraction of metadata by a device independent firmware update utility as described by Thurston is silent with respect to a memory of an updatable electronic

device, let alone using update information stored in the memory of the updatable electronic device as claimed, and cannot teach, suggest, or otherwise render obvious such a use of update information stored in the memory of the updatable electronic device.

Further, Applicant respectfully submits the “plug-in module” of Thurston is quite different from, and does not disclose a removable electronic memory device, and Thurston therefore does not teach “wherein the removable electronic memory device comprises metadata information associated with the stored update information...” as claimed. In contrast, the presently claimed subject matter recites “wherein the removable electronic memory device comprises metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software.” Thus, even if Johansson and Thurston were somehow combined, that combination would still not teach, suggest, or otherwise render obvious wherein the removable electronic memory device comprises metadata information associated with the stored update information for updating as claimed.

In any event, even if the cited combination were somehow construed, *arguendo*, as teaching a removable electronic memory device comprising metadata, the cited combination still fails to teach, suggest, or otherwise render obvious either “metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software.” Thurston merely states that “the device independent firmware update utility 302 after receiving the firmware update

package 108a extracts the metadata included in the header 400 and list of properties package 402." Such a teaching is silent with respect to stored update information for updating of the at least a portion of at least one of firmware and software (where the updatable electronic device comprises the memory where the update information is stored), let alone wherein the metadata information is associated with such stored update information. The cited art, either alone in or in combination, therefore does not teach, suggest, or otherwise render obvious metadata information stored on a removable electronic memory device, where the metadata information is associated with update information stored in a memory that is part of an updatable electronic device, as claimed.

Claims that depend from claim 1 are allowable for further reasons. For example, claim 7 recites the device of claim 1 "wherein the metadata information associated with the stored update information for updating of the at least one firmware and software comprises an indication of the availability in the memory of update information for the at least one of a firmware and software." In rejecting claim 7, the Final Office Action asserts, "Johansson discloses the device of claim 1 where the metadata information ~~related to~~ associated with the stored update information for updating of the at least one firmware and software comprises an indication of the availability of update information for the at least one of a firmware and software (e.g., see Fig. 3, and associated text, col. 7, lines 6-7 states "if the SUM card is valid for upgrading, the upgrading functions would be displayed on the display...")." (See Final Office Action at p. 6; underlining and strike-

through in original.) The Final Office Action does not address the aspect of claim 7 that recites "...comprises an indication of the availability in the memory of update information...", instead merely asserting that Johansson teaches "...comprises an indication of the availability of update information..." Thus, even if Johansson did teach what it was asserted as teaching, the Office Action still would not even assert Johansson as teaching the claimed "...availability in the memory of update information..." As such, Applicant respectfully submits that the Office Action does not present a *prima facie* case of obviousness.

In any event, the cited portion of Johansson ("if the SUM card is valid for upgrading, the upgrading functions would be displayed on the display...") is utterly silent with respect to availability in the memory of update information, let alone teaches, suggests, or otherwise renders obvious "wherein the metadata information associated with the stored update information for updating of the at least one firmware and software comprises an indication of the availability in the memory of update information for the at least one of a firmware and software" as claimed. Again, the claimed "removable electronic memory device" (the "SUM card" is asserted elsewhere in the Office Action as a removable memory device) is distinct from "the memory" as claimed. Whether or not a "SUM card" is valid is quite different from, and does not teach anything with respect to, the availability in the memory of update information for the at least one of a firmware and software. This is even more so in light of the above discussed distinction

between the claimed memory (which, from above, is part of the updatable electronic device) and the claimed removable electronic memory device.

As another example, claim 8 recites the device of claim 1 "wherein the metadata information associated with the stored update information for updating of the at least one firmware and software comprises an indication of the success of an update of the at least one of firmware and software." The Office Action asserts that Johansson discloses this aspect of claim 8 at Fig. 3, item 120. (See Office Action at p. 6.) Item 120 of Johansson is a step that states "Show 'OK' in the Display." (Johansson at Fig. 3.) The text of Johansson also explains that "If the error checking routine at step 110 is clear, "OK" is shown in the display at step 120 indicating transmission has been successfully completed." (*Id.* at 7:67-7:1.) Applicant respectfully submits that the display of Johansson does not teach anything with respect to metadata information. In any event, such a display, which is displayed after an error checking routine, is quite different from the subject matter of claim 8 which recites that it is "the metadata information" that "comprises an indication of the success of an update..." Applicant respectfully submits that the Office Action does not present a *prima facie* case of obviousness for claim 8, and that the cited combination does not teach, suggest, or otherwise disclose the claimed subject matter of claim 8 for this additional reason.

Applicant respectfully submits that the Office Action fails to present a *prima facie* case of obviousness for claim 1. Applicant further respectfully submits that the cited art, either alone or in combination, does not teach, suggest, or otherwise render obvious the

subject matter claimed by independent claim 1, and that claim 1 and its dependent claims are allowable over the cited references.

B. The Proposed Combination Does Not Render Claims 11-23 and 27-29 Unpatentable

Turning now to claim 11 and the claims dependent therefrom, independent claim 11 recites a method of updating an updatable electronic device comprising a memory containing at least one of firmware and software, and a user removable electronic memory device, the method comprising retrieving metadata information from the user removable electronic memory device; determining whether update information for updating the at least one of firmware and software is available in the memory, using the metadata information from the user removable electronic memory device; performing an update of at least a portion of the at least one of firmware and software using at least a portion of the metadata information from the user removable electronic memory device, if update information for updating the at least one of firmware and software is available in the memory; and refraining from performing an update of at least a portion of the at least one of firmware and software, if update information for updating the at least one of firmware and software is not available in the memory.

The Office Action relies on the same grounds of rejection for claim 11 as for claim 1. (See Office Action at p. 2-3.) In reviewing the rejections of claims 1 and 11, Applicant is unable to recognize any portion of the Office Action addressing at least “determining whether update information for updating the at least one of firmware and

software is available in the memory, using the metadata information from the user removable electronic memory device” or “...and refraining from performing an update of at least a portion of the at least one of firmware and software, if update information for updating the at least one of firmware and software is not available in the memory,” or identifying any portion of the cited art as teaching those aspects of claim 11. Applicant respectfully submits that, for those reasons alone, the Office Action fails to present a *prima facie* case of obviousness. Applicant further respectfully submits that the cited art does not teach, suggest, or otherwise render obvious the claimed “determining...” and “refraining...”, for at least the reasons discussed above with respect to claims 1 and 7. Further, to the extent that the Office Action does assert portions of the prior art as teaching aspects of claim 11, Applicant respectfully submits that claim 11 is allowable for similar reasons as discussed above with respect to claim 1.

Applicant further respectfully submits that claims dependent from claim 11 are allowable for additional reasons. For example, with respect to claim 19, the Office Action acknowledges that Johansson does not disclose “...the information from the user removable electronic memory device comprises the location of at least one of the update package and the server.” (See Office Action at p. 9.) The Office Action then asserts this shortcoming is overcome in the prior art because “O’Neil disclose updating the client from a server side location as well as performing updates wirelessly (11:30-12:10.)”¹⁶ (*Id.*) As Applicant has previously pointed out, however, that cited portion of

¹⁶ The Final Office Action does not identify “O’Neil” as being a grounds for rejecting any of the pending claims (see Office Action at p. 2), or identify “O’Neil” with any specificity.

Application Serial No. 10/706,219
Appeal Brief
April 1, 2009

O'Neil does not teach, suggest, or otherwise render obvious at least "metadata information from the user removable electronic memory device comprises the location of at least one of the update package and the server." (See Response filed October 15, 2008.)

Applicant respectfully submits that the Office Action fails to present a *prima facie* case of obviousness for claim 11. Applicant further respectfully submits that the cited art, either alone or in combination, does not teach, suggest, or otherwise render obvious the subject matter claimed by independent claim 11, and that claim 11 and its dependent claims are allowable over the cited references.

(See *id.* at p. 9.) Applicant therefore assumes the Office Action is referring to U.S. Patent No. 6,832,373, which was discussed in previous Office Actions.

Application Serial No. 10/706,219
Appeal Brief
April 1, 2009

II. Conclusion

For at least the reasons discussed above, the Applicant respectfully submits that the pending claims are allowable in all respects. Therefore, the Board is respectfully requested to reverse the rejections of pending claims 1-29.

Date: April 1, 2009

Respectfully submitted,

Hewlett-Packard Company
Intellectual Property Administration
Legal Department, M/S 35
P.O. Box 272400
Fort Collins, CO 80527-2400

/Kevin E. Borg/
Kevin E. Borg
Reg. No. 51,486

CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. An updatable electronic device comprising:
 - a memory comprising at least one of firmware and software;
 - at least one firmware component, functioning to update at least a portion of at least one of firmware and software using update information stored in the memory;
 - an interface for communicatively coupling to a removable electronic memory device; and
 - wherein the removable electronic memory device comprises metadata information associated with the stored update information for updating of the at least a portion of the at least one of firmware and software.

2. The device of claim 1 wherein the at least one firmware component comprises:
 - an update agent for updating the at least a portion of the at least one of firmware and software, the update agent using the update information and the information related to the updating of the at least one of firmware and software.

3. The device of claim 1 further comprising:
 - a communication interface for receiving the update information.

4. The device of claim 3 wherein the communication interface is a wireless communication interface.

5. The device of claim 2 wherein the update information comprises an update package containing a set of instructions executable by the update agent for updating the at least a portion of the at least one firmware and software.

6. The device of claim 1 wherein the metadata information associated with the stored update information for updating of the at least one firmware and software comprises at least one of a cyclic redundancy check (CRC), a location in a file system, a memory address, a status flag, and new firmware.

7. The device of claim 1 wherein the metadata information associated with the stored update information for updating of the at least one firmware and software comprises an indication of the availability in the memory of update information for the at least one of a firmware and software.

8. The device of claim 1 wherein the metadata information associated with the stored update information for updating of the at least one firmware and software comprises an indication of the success of an update of the at least one of firmware and software.

9. The device of claim 1 wherein the metadata information associated with the stored update information for updating of the at least one firmware and software is used to verify or authenticate an update of the at least one of firmware and software.

10. The device of claim 1 wherein the removable electronic memory device comprises one of a subscriber identity module (SIM) card, a smart card, an integrated circuit (IC) card, a removable memory card, and a removable memory module.

11. A method of updating an updatable electronic device comprising a memory containing at least one of firmware and software, and a user removable electronic memory device, the method comprising:

retrieving metadata information from the user removable electronic memory device;

determining whether update information for updating the at least one of firmware and software is available in the memory, using the metadata information from the user removable electronic memory device;

performing an update of at least a portion of the at least one of firmware and software using at least a portion of the metadata information from the user removable electronic memory device, if update information for updating the at least one of firmware and software is available in the memory; and

refraining from performing an update of at least a portion of the at least one of firmware and software, if update information for updating the at least one of firmware and software is not available in the memory.

12. The method of claim 11 wherein the user removable electronic memory device comprises one of a subscriber identity module (SIM) card, a smart card, an integrated circuit card, a removable memory card, and a removable memory module.

13. The method of claim 11 wherein the updatable electronic device is a mobile handset.

14. The method of claim 11 wherein the metadata information from the user removable electronic memory device comprises at least one of a signature, a location in a file system, a memory address, a status flag, and new firmware.

15. The method of claim 14 wherein the signature comprises a cyclic redundancy check (CRC).

16. The method of claim 11 wherein the metadata information from the user removable electronic memory device comprises an indication of the availability in the

memory of update information for updating the at least a portion of the at least one of a firmware and software.

17. The method of claim 11 wherein the metadata information from the user removable electronic memory device is used to verify or authenticate an update of the at least a portion of the at least one of a firmware and software.

18. The method of claim 11 further comprising:
receiving update information comprising an update package from a server; and
the update package comprising a set of instructions for updating the at least a portion of the at least one firmware and software.

19. The method of claim 18 wherein:
the receiving is performed using a wireless network; and
the metadata information from the user removable electronic memory device comprises the location of at least one of the update package and the server.

20. The method of claim 11 further comprising:
storing status information in the user removable electronic memory device, if an update was performed; and

refraining from storing status information in the user removable electronic memory device, if an update was not performed.

21. The method of claim 11 further comprising:

performing at least one of restarting or rebooting the updatable electronic device.

22. The method of claim 21 wherein at least one of a need to restart or reboot and a type of reboot is resident in the user removable electronic memory device.

23. The method of claim 11 wherein the determining comprises:

verifying whether the retrieved metadata information is at least one of appropriate and authentic;

continuing the performance of an update, if the verification is successful; and

executing a normal startup of the updatable electronic device, if the verification is not successful.

24. The updatable electronic device of claim 1, wherein the update information comprises at least one update package.

25. The updatable electronic device of claim 1, wherein the metadata information related to the stored update information for updating of the at least one of

firmware and software comprises information identifying the source of the update information received by the electronic device.

26. The updatable electronic device of claim 25, wherein the information identifying the source of the update information comprises a universal resource locator (URL).

27. The method of claim 11, wherein the update information comprises at least one update package.

28. The method of claim 11, wherein the determining comprises:
downloading the update information from a remote server identified in the user removable electronic memory device.

29. The method of claim 19, wherein the location of at least one of the update package and the server comprises a universal resource locator (URL).

Application Serial No. 10/706,219
Appeal Brief
April 1, 2009

EVIDENCE APPENDIX
(37 C.F.R. § 41.37(c)(1)(ix))

- (1) United States Patent No. 5,418,837 ("Johansson"), entered into record in Office Action mailed November 14, 2006.
- (2) United States Patent Application Publication No. 20030217358 ("Thurston"), entered into record in Office Action mailed January 6, 2009.

Application Serial No. 10/706,219
Appeal Brief
April 1, 2009

RELATED PROCEEDINGS APPENDIX

(37 C.F.R. § 41.37(c)(1)(x))

Not applicable.